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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,592	09/27/2001	John Gray	MCI-004.1	2680

2387 7590 07/14/2003

OLSON & HIERL, LTD.  
20 NORTH WACKER DRIVE  
36TH FLOOR  
CHICAGO, IL 60606

EXAMINER
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LOVERING, RICHARD D

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 07/14/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. 09/937,592	Applicant(s) GRAY ET AL.
Examiner LOVERING	Group Art Unit 1712

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

Responsive to communication(s) filed on SEPT. 27 & NOV. 26, 2001.

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

Claim(s) 32 - 64 is/are pending in the application.

Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) 55-60 is/are allowed.

Claim(s) 32-54 AND 61-64 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

### Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). 4  Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892  Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948  Other \_\_\_\_\_

## Office Action Summary

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 32-36, 38-43, 45 and 49-54 are rejected under 35 U.S.C. § 102(b) as being clearly anticipated or at least anticipated by Giret et al. 5,409,640, column 9, line 47 - column 11, line 10, noting especially Example VII containing, inter alia, 3% coconut monoethanolamide. While Giret et al. do not use applicants' nomenclature of "emulsifying surfactant", they do disclose cocoamphoacetate, Na laureth-3 sulfate, etc. (column 10, lines 1-27; and Example VII), and it is well-settled that a reference need not disclose a specific limitation in haec verba.

See In re Bode et al., 193 USPQ 12, 13; and Ex parte Novitski, 26 USPQ 2d 1389.

4. Claims 37, 44, 46-48, 58 and 61-64 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Giret et al. above. The especially pertinent portions of Giret et al. are pointed out in the preceding paragraph. As to claims 37, 61 and 62 herein, while Example VII of Giret et al. does not disclose a concentration of coconut monoethanolamide of 5% or above, it would have been obvious to one skilled in the art at the time applicants' invention was made to use such concentrations in the compositions of Giret et al. because they suggest this in column 5, lines 53-59. As to claims 44 and 46-48 herein, while the cleansing composition of Example VII of Giret et al. does not contain a betaine, it would have been obvious to one skilled in the art at the time applicants' invention was made to incorporate a betaine, such as coco- or lauryl-amidopropyldimethylcarboxymethyl betaine, in said cleaning compositions of Example VII of Giret et al. because they suggest doing this in column 2, lines 41-44; column 5, lines 53-56; and column 7, lines 8-23. As to claim 58 herein, while Giret et al. may post-add their perfume after mixing phases A and B (in which phase B contains coconut monoethanolamide), it would have been obvious to one skilled in the art at the time applicants' invention was made to solubilize the perfume of Giret et al. in

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said phase B instead of post-adding it, absent any unexpected result. The order of procedure in mixing ingredients of a composition is a mere matter of choice within the skill of the art. See In re Hampel, 74 USPQ 171; and In re Gibson, 5 USPQ 231, 232 (1930). As to claims 63 and 64 herein, while Giret et al. may not exemplify a terminal step of adjusting solids content to not more than 60% by adding water, it would have been obvious to one skilled in the art at the time applicants' invention was made to use such a terminal step in the process of Giret et al. because their disclosure in column 9, lines 40-42, suggests such a procedure.

5. Claims 50 and 57 are objected to because of the following informalities: Claim 50 lacks a period at the end of the last line; and claim 57, penultimate line, recites "sulfosuccinatesand" instead of --sulfosuccinate and--. Appropriate correction is required.

6. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record doesn't disclose or fairly suggest the cold mixing process of claims 55-60 herein.

7. Applicants are requested to change the wording of their inserted passage entitled "Cross-Reference to Related Application" to --This application is a 371 of PCT/US 00/09927

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filed April 14, 2000, which claims the benefit of U.S. provisional Application 60/287,574 filed April 14, 1999.--

8. The references listed on the attached Form PTO-1449 and Form PTO-892 are cumulative to the reference applied herein, and/or further show the state of the art.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Lovering whose telephone number is (703) 308-0443. The examiner can normally be reached on Mon.-Fri. from 7:30 A.M. to 4:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Dawson, can be reached on (703) 308-2340. The fax phone number for this Group is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

R. Lovering:cdc  
July 9, 2003

*Richard S. Lovering*  
RICHARD S. LOVERING  
PHILADELPHIA  
CITY, PA 19106